

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KARL LAVON GATHINGS,

Defendant-Appellant.

UNPUBLISHED

May 29, 2014

No. 311816

Wayne Circuit Court

LC No. 12-001227-FH

Before: CAVANAGH, P.J., and OWENS and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of malicious destruction of, or tampering with, utility property, MCL 750.383a. We affirm.

On November 17, 2011, defendant was seen by police standing by a meter box at the back of a house on Linnhurst Street in Detroit with a pair of pliers in his hands. The pliers held a piece of metal. Defendant was also seen putting the piece of metal into the meter box. Upon further investigation by police, it was determined that two pieces of metal were inside the meter box, in the place of fuses, and the power was on inside the house. DTE's chief security officer, Mike Lynch, testified that the subject house did not have an active account and the electric service had been disconnected both at the meter box and at the pole because of theft. Upon investigation, Lynch determined that the meter was missing from the cabinet and the meter block was "jumped from line to load." That is, pieces of metal were connecting the line to the load, and the electric service had been restored improperly at the pole. The meter allows DTE to measure the use of electricity at a house. A measurement revealed 20.8 amps of electricity being used at the house on the day of Lynch's investigation.

On appeal, defendant argues that the evidence was insufficient to establish that he tampered with or manipulated "property of a utility" as required under MCL 750.383a. We disagree.

Challenges to the sufficiency of the evidence in a bench trial are reviewed de novo. *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). The trial court's findings of fact are reviewed for clear error, and its conclusions of law are reviewed de novo. *Id.* "The evidence is viewed in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt." *Id.* at 474.

Defendant argues that the prosecutor failed to establish beyond a reasonable doubt that DTE owned the meter box, the meter block, and the associated components. However, Lynch, who had worked for DTE for 35 years and investigated this matter in person, testified unequivocally that the outdoor meter cabinet with two brass locking devices (or “meter box”) was DTE’s property, as was the black meter block, which holds the meter itself. He had seen “thousands of those kind of boxes” and “firmly believe[d]” that it was DTE’s meter box and meter block. Lynch also testified that the models used by DTE were not commercially available. Further, the testimony of defendant’s brother, Isaiah Gathings, did not controvert Lynch’s testimony regarding the ownership of the utility equipment because, while Gathings had done electrical work for defendant in the past, he had not done work at the Linnhurst house. Accordingly, the evidence was sufficient to support defendant’s conviction. See *Lanzo Constr Co*, 272 Mich App at 474.

Next, defendant argues that the guilty verdict was against the great weight of the evidence because Lynch’s testimony “that the meter box and meter block was [sic] the property of DTE is heavily offset by compelling evidence of [defendant’s] innocence.” We disagree.

A new trial may be granted where the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003).

In this case, defendant argues that meter boxes and meter blocks can be purchased at home improvement stores and Lynch could not point to a detail on any photograph which indicated that those items were owned by DTE. However, as discussed above, Lynch went to the subject house and unequivocally testified that the particular meter box and meter block at issue were owned by DTE. Defendant failed to set forth any evidence refuting that testimony. Accordingly, this issue is without merit.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald S. Owens
/s/ Michael J. Kelly